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OCT 16 1947

The Honorable,

The Secretary of the Army.

My dear Mr. Secretary:

Reference is made to your letter of August 25, 1947, relative to certain transactions involving the account of Captain E. F. Freiburg, F. D., United States Army, arising out of the issuance and cashing by the officer of check No. 530,348, for \$139.65, drawn on May 23, 1946, by Captain E. F. Freiburg, symbol No. 12-116, to the order of Ronald G. Russell.

It appears from available information that the disbursing officer issued the check involved and, on the same day, cashed it for someone unknown upon the forged endorsement of the payee's name and forwarded it to the Treasurer of the United States for deposit to his official credit, the same being included in certificate of deposit number 24, dated May 23, 1946, in the total amount of \$14,459.36. Apparently, the payee reported the forgery of his name on the check to the Treasurer of the United States who, after investigation, being satisfied as to the payee's allegations of forgery and nonparticipation in the proceeds of the check, charged the amount of the check to wit, \$139.65, to the official checking account of the depositor, Captain E. F. Freiburg, as evidenced by Debit Voucher Form 5504 (No. 8358), dated July 11, 1947, and effected

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settlement with the payee. Captain Freiburg had closed his account on December 15, 1946, and, since he transferred or deposited all unexpended balances at that time, the action of the Treasurer of the United States reduced the reserve for outstanding checks in the amount of \$139.65.

Your letter cites the act of December 23, 1944, 58 Stat. 921, authorizing certain transactions by disbursing officers of the United States, including authority to cash and negotiate checks, which provides, in pertinent part, as follows:

"That subject to regulations promulgated pursuant to this Act, disbursing officers of the United States are hereby authorized, for official purposes, or for the accommodation of military, naval, and civilian personnel of the United States Government, and personnel of contractors and of authorized nongovernmental agencies operating with the armed forces of the United States, to cash and negotiate checks, drafts, bills of exchange, and other instruments payable in United States and foreign currencies, and to conduct exchange transactions involving United States and foreign currency and coin, checks, drafts, bills of exchange, and other instruments. Any official funds which are held by such disbursing officers and which are available for expenditure may, with the approval of the head of the agency having jurisdiction over such funds, be utilized for this purpose.

"Sec. 2. Any gains in the accounts of disbursing officers of the United States resulting from operations permitted by this Act shall be paid into the Treasury as miscellaneous receipts. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to adjust any deficiencies in the accounts of disbursing officers of the United States which may result from such operations."

The Military Appropriation Act, 1947, approved July 16, 1946, makes an appropriation under Finance Service, Army, for the payment of losses in the accounts of Army disbursing officers of the type specified in said act of December 23, 1944.

Also, there is cited in your letter War Department Circular No. 64, dated March 5, 1946, stated to be directive in character and, therefore, leaving little discretion to disbursing officers, other than the exercise of reasonable care to comply with the self-contained instructions.

Your letter poses four questions, apparently based upon the assumption that the act of December 23, 1944, covers a situation such as hereinbefore described.

The matter first for consideration is whether a loss sustained by an Army disbursing officer due to the cashing of a check upon a forged endorsement of the payee's name is a deficiency in his accounts within the purview of section 2 of the act of December 23, 1944, supra. Said section provides for appropriate adjustment of "any deficiencies" in the accounts of disbursing officers of the United States which may result from operations under the act.

Obviously, where the account of a disbursing officer is charged with the amount of a forged check, such as in the particular case under consideration, and said amount is paid to the rightful payee, there occurs a deficiency in the officer's account. Since the cashing of a check is an operation authorized under the act, any loss arising out of such transaction properly may be considered as coming within the purview of the term "any deficiencies" for which relief is contemplated under the act. However, relief of the disbursing officer would be contingent upon his compliance with the

regulations prescribed in connection with the cashing of checks and upon a determination that he was not negligent in the matter.

Accordingly, in answer to your first question, it may be stated that the appropriation "Finance Service, Army"—appropriating funds to cover losses in the accounts of Army disbursing officers in accordance with the act of December 23, 1944—is available for the payment of losses arising out of the cashing of forged checks if it be administratively determined that the disbursing officer exercised reasonable care and was not negligent. However, said appropriation is not available where it is administratively determined that the disbursing officer was at fault and recovery from him is not effected.

Your second question is as follows:

"b. Is the mentioned appropriation available for payment to the payee or rightful owner where it has been administratively determined that they did not receive or participate in the proceeds of a fraudulently negotiated instrument, and provided there is no regularly established forgery fund operated for this purpose by other departments or agencies? (This would include official depository checks, military payment orders and perhaps certain commercial checks which disbursing officers are authorized to cash under the regulations, but would exclude Treasury checks and Postal Money Orders.) Can such payments be made pending recovery or attempted recovery of the loss?"

The question is so broadly framed that, in the absence of the submission of specific cases accompanied by a full and complete statement of the facts involved, this Office properly may not give a definite answer thereto.

Your third question reads as follows:

"c. Is said appropriation available to reimburse the Treasury Department or Post Office Department after settlement by those departments with the payee or rightful owner from their respective

reclamation or forgery funds? Is it available to reimburse a commercial banking institution under similar conditions? Can such payment be made pending recovery or attempted recovery of the loss?"

Since the act of December 23, 1944, operates only in the event of a deficiency in the accounts of the disbursing officer, unless and until a deficiency is incurred in the accounts, such as in the case of Captain Freiburg, the appropriation involved is not available for making adjustments.

Your fourth and final question asks whether additional funds may be advanced from Army Account of Advances to a disbursing officer after his accounts are closed in order that a sufficient reserve may be maintained for outstanding checks pending recovery or the attempted recovery of the amount of the loss. Said question is answered in the negative.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General  
of the United States.